Frack Free NT - Submission to the Legislative Scrutiny Committee on the Territory Coordinator Bill 2025

To the Members of the Legislative Scrutiny Committee,

Thank you for the opportunity to provide feedback regarding this incredibly significant piece of legislation.

Frack Free NT is a community group that has been active for over a decade, with thousands of supporters across the NT. We pride ourselves on uniting people from different walks of life and different political backgrounds, under the shared vision of protecting the NT's precious water, environment and cultures from the dangers of gas fracking.

On these grounds, we strongly believe that the Legislative Assembly should not pass this bill, and we urge the Committee to recommend this accordingly.

As we will outline below, we also do not believe that this bill has sufficient regard to the rights and liberties of individuals.

Overarching concerns

The primary concern of Frack Free NT is the potential impacts of gas fracking on the NT's water, climate, environment and First Nations communities and culture. If fracking is to go ahead in the Northern Territory, government and industry must (at a minimum) fully implement and adhere to the 135 recommendations made by the Scientific Inquiry into Hydraulic Fracturing (known as the Pepper Inquiry). We are concerned that the Territory Coordinator Act paves the way for *many* of these recommendations to be removed, watered down or bypassed.

Fundamentally, we are deeply concerned with the powers being concentrated in the Minister for the Territory Coordinator and the Territory Coordinator through this legislation.

These powers go well beyond anything that has been seen in the NT previously, and wield far more power than analogous roles such as the State Coordinator-General in SA or the Coordinator-General in QLD.

While the government has publicly stressed that the intention of this bill is to streamline duplicated bureaucratic processes and ensure adherence to statutory timelines, these elements (prioritisation and progression-related requests) make up just a fraction of this legislation. Based on hundreds of conversations with members of the public over the last two months, we believe that the vast majority of the general public is grossly unaware of the full scope of the powers invested in the Minister for Territory Coordinator.

Furthermore, a number of clauses in the legislation are worded in a way that allows for an extremely broad and subjective interpretation. These must be tightened so that it is explicitly clear as to when and for what purposes a power can be used, and how this decision is to be reached.

Specific concerns

The subheadings below outline the major concerns we have with this legislation. Given the short turnaround time on submissions to this Committee and the complexity of language in the bill, however, we stress that this is not a comprehensive list of our concerns, but an attempt to capture what we believe are the most concerning aspects of this legislation.

We strongly urge the Committee to seek legal expertise regarding the potential ways in which the powers outlined in this bill could be interpreted and used (or misused), and to ensure all Parliamentarians are fully briefed with this information before they are asked to vote on it.

Primary Principle

The primary principle - Clause 8(1) - designates “economic development” as the primary objective that should drive decisions made by the Territory Coordinator, elevating it above any social or environmental outcomes.

The principles of ecologically sustainable development (ESD) are widely accepted as governing principles for decision-making across Australia and much of the world, placing economic, social and environmental outcomes on an equal footing.

Recommendation: The primary principle should adhere to the principles of ecologically sustainable development, and ensure economic, social and environmental outcomes are considered with equal weighting.

Exemption Notices (Clauses 77-82)

We have laws and regulations for good reason, including to place checks and balances on the power of any individual arm of government, and protect the rights of communities and individuals. It is fundamentally undemocratic to enable the bypassing or circumventing of 32 pieces of legislation and their associated regulations, and we have seen little justification for why the Territory Coordinator would need this level of power.

Despite this being arguably the most contentious element of the bill, fiercely disputed during the consultation period, exemption powers appear to have become even more broad and sweeping in the tabled version of the bill. For example:

- Grounds for giving an exemption notice are extraordinarily broad, i.e. Clause 78(1)(a) states that an exemption notice can be given simply if the law “is not necessary for achieving effective or efficient regulation”. Who determines what is “necessary” and how do they determine that? There is also no clarity as to what “effective or efficient regulation” means - this is entirely subjective. If the government is concerned about existing regulations in the NT not being effective or efficient, good governance would necessitate amending specific clauses in the relevant legislation to improve the

efficacy of that legislation, not providing sweeping powers to bypass the entire Act or regulation.
- Step-in notices are no longer required as a precursor to an exemption notice.
- The draft bill prevented exemption notices that involved a requirement under the *Environment Protection Act 2019* and associated regulations, or bilateral Commonwealth Agreements - these do not appear in the revised legislation.

During the initial public consultation period for this bill, the Interim Territory Coordinator stated that the intention of the government was that these exemption powers would be used rarely. There is little, however, in the legislation to prevent frequent and significant use of these powers. The primary check on the use of these powers seems to be their tabling in the Legislative Assembly, which given the unicameral nature of government in the NT is unlikely to prevent these exemption notices from being passed.

Recommendation: Exemption notices should be removed from the bill entirely, or at an absolute minimum, much stricter conditions must be introduced limiting the circumstances in which they can be used.

Acts that are Scheduled Laws

There has been little to no justification of why each of the 32 Acts listed in the Schedule have been included.

Does every Parliamentarian understand why each Act has been listed, and the potential implications of condition variations or exemption notices being given in relation to each of these laws? Does the public understand the potential implications of exempting parties from the requirements stipulated by these Acts? If not, we suggest that the Parliament is not in a position to be voting on this bill.

During the consultation period, the Chief Minister stated to the ABC that the *Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004* had been included in the Schedule because: *"of medical isotopes that we are dealing with throughout our hospital network."*[1] The ABC clarified that this Act sets out the laws governing the dumping of nuclear waste and has nothing to do with medical isotopes, and we have subsequently seen that this Act has been dropped from the Schedule.

If the Chief Minister herself misunderstood this, we are inclined to wonder which other Acts have been included without a full understanding - by all Parliamentarians - of what the potential consequences could be, should a future government choose to circumvent regulatory requirements laid out in these items of legislation.

Recommendation: That Parliament and the public receive a detailed explanation and justification of why each Act has been included in the Schedule, to allow for discussion and debate before this bill is voted on.

The specific clauses of each Act which are subject to the Territory Coordinator Bill must also be explicitly identified.

[1] https://www.abc.net.au/news/2025-01-16/nt-territory-coordinator-concerns-laws-could-erode-rights/104820618

Step-in Notices (Clauses 68-76)

The Step-in powers outlined in the Territory Coordinator Act concentrate too much power with the Territory Coordinator and Minister for the Territory Coordinator.

Our departments and public servants hold huge amounts of specialised expertise, and the Minister responsible for these departments should be the one to make decisions on their recommendations, without the possibility of being overridden or having the decision taken out of their hands.

If respect for our system of government is to be maintained, prioritisation and progression requests should be sufficient to achieve the intended aims of the Territory Coordinator of streamlining duplicated processes and regulatory assessment of major projects.

An example of a worryingly broad and subjective clause is Clause 73(2), which is highly ambiguous and underscores why thorough parliamentary scrutiny of all possible consequences of this Bill must be undertaken.

Clause 73(2) grants the Territory Coordinator power, when exercising a decision-making function after "stepping-in" on the usual process, to impose conditions to the decision in pursuit of the "primary principle."

> *"In imposing any conditions permissible under the relevant law in making a statutory decision under a step-in notice, the Territory Coordinator may also impose any conditions the Coordinator considers necessary or desirable to promote the primary principle."*

The drafting of this section makes it unclear whether or not conditions imposed by the Coordinator to promote the primary principle must also be "permissable under the relevant law." The use of the word "also" here implies that the Territory Coordinator would have power to impose conditions that would otherwise be impermissible. If that reading of the section were adopted, the Territory Coordinator would be able to impose conditions outside of the law which they are exercising their step-in powers over, so long as those conditions promote an extremely broad and subjective definition of economic development.

Recommendation: These powers should be removed from the bill entirely, or at an absolute minimum, it must be made clear that any additional conditions imposed by the Territory Coordinator must be consistent with the provisions of the law under which the Coordinator is making decisions.

Condition Variation Notices (Clauses 83-87)

We are very concerned that condition variation notices would allow the Territory Coordinator to change or remove important conditions placed on projects, with minimal safeguards or limitations on what conditions could be changed or removed.

Clause 85(b) states that a variation could be permitted simply if "the applicant for the decision has consented to the variation." As we understand, this effectively means that all that is needed for a variation to go ahead, is for the proponent of a project to agree with the

proposed condition variation. So if the Territory Coordinator proposes to remove conditions around a fracking company's wastewater management plan, the fracking company simply has to agree with this for the condition variation to have grounds.

Similarly, Clause 85(e) states that grounds for a condition variation is that "the Coordinator is satisfied, on reasonable grounds, the circumstances prescribed by regulation exist" (85e). The wording of this clause is extremely broad and subjective.

We are also very concerned that Clause 86(1) enables this variation to be made *"whether or not the variation effecting the condition could have, but for the operation of this section, been validly made under the relevant law."* This seems to again allows for the Territory Coordinator to step outside of existing laws, rather than the Parliament amending laws which they see as in need of amendment.

There are a plethora of important conditions that are placed on fracking projects, including wastewater management plans, well integrity measures, threatened species management plans, greenhouse gas abatement plans etc., that were laid out in the Pepper Inquiry and are designed to protect communities and our environment from harm brought about by negligence or mismanagement. The powers outlined through condition variations would allow any of these conditions to be removed at the subjective determination of the Territory Coordinator

Recommendations: That, at a minimum:

- **Clause 85(b) is removed as grounds for the approval of a condition variation.**
- **Clause 85(e) is removed, as it provides too much subjective power to the Territory Coordinator to determine "when circumstances provided by regulation exist"**
- **Clause 86(1) is amended so that the Territory Coordinator cannot add/remove/amend conditions that would not be permissible under the relevant law.**

<u>Powers to enter land</u>

We are concerned that the Territory Coordinator can authorise personnel to enter land, without consent from the landowner, for a very broad range of purposes - Clause 93(1).

There seems to be no right for landholders to challenge this access to their properties, and if damage is caused to the land, the amount of compensation is determined by the Territory Coordinator - Clause 94(1).

Recommendation: That, at a minimum:

- **Grounds are provided for land owners or occupiers to challenge any decision to authorise access to their land**
- **An independent third party is responsible for assessing and determining compensation for land owner or occupier**

Removal of limitation of powers and eligibility criteria

The draft bill had a section entitled “Limitation on exercise of powers” (Clause 14), which stated that the Territory Coordinator could not interfere with:

- An agreement between the Territory and Commonwealth
- The Northern Territory Aboriginal Sacred Sites Act 1989
- The Heritage Act 2011
- The Aboriginal Land Act 1978
- The rights of Aboriginal persons under the Pastoral Land Act 1992
- The recognition and protection of native title rights and interests under a law of the Territory

This section has been removed without explanation, which is of great concern in relation to the rights of Aboriginal people in the NT.

Clause 79 from the draft bill, which set out some limitations on who could become the Territory Coordinator, has also been removed. This allows for serious potential conflicts of interests, which should be mitigated by this bill.

Recommendation: These clauses should be reinstated in the final bill.

Reporting and Publication

Sections 89 and 90 specify that the Territory Coordinator must supply the Minister with notices and requests and reasons for those notices and requests within 5 business days.

Recommendation: Section 88 should be amended to ensure that these are made available to the public at the same time, rather than “As soon as practicable.”

Incorporation of feedback from the community

Lastly, we are concerned that the feedback received during the consultation period has not been taken into account in this revised bill.

Of the 550 submissions received, we know that 248 were sent via Frack Free NT opposing some of the elements of the bill outlined above. None of these elements have been amended in any way to address these concerns.

We know that the in-person consultations in Alice Springs, Katherine, Nhulunbuy and Darwin/Palmerston were attended by people who were almost unanimously opposed to the Territory Coordinator Act, yet almost none of their concerns seem to have been addressed in this revised bill.

We know that this Scrutiny Committee has been unable to access the submissions made by the public as part of the previous round of feedback.

We must ask - what is the point of consultation and submissions, if there is no quantitative or qualitative assessment of submissions made beyond how many submissions were received

or how many people attended consultations - particularly in regard to those that do not align with the government's desired outcome?

Recommendation: That the legislation be amended to incorporate the main themes of public concern, so as to mitigate these concerns.

Conclusion

We thank the Committee for the opportunity to input into this process and for your consideration of our submission. The Territory Coordinator legislation represents an unprecedented concentration of power in the hands of a few key individuals, with highly subjective conditions around the use of this power. We are gravely concerned about their potential misuse, including (but not limited to) enabling the Territory Coordinator to remove critical safeguards that apply to industries which in fact should be subject to the highest possible standards of regulation, such as the fracking industry.

This can be evidenced by Recommendation 16.1 of The Pepper Inquiry: "*The Government must accept and implement all of the recommendations - The recommendations in this Report are a complete package. It is only the implementation of the entire package that will create the framework that will mitigate the risks associated with any onshore shale gas industry in the NT to an acceptable level. If the Government does not implement all the Panel's recommendations, then the Panel, in the Panel's assessment, is not able to state with certainty that the identified risks will be mitigated to acceptable levels."*[2]

Furthermore, the Independent Overseer of the Pepper Inquiry's recommendations stated in his final report that: *"The oil and gas industry is well established and highly profitable, and has developed systems to influence the social and political environment in its favour in order that decision-makers favour their interests above other considerations. This phenomenon, well documented wherever the industry operates, is referred to as "regulatory capture" and is one of the most complex and difficult of the risks identified by the Inquiry for governments to manage.*

The Inquiry found that the ***widespread distrust in government to regulate the gas industry*** *was founded on the perception of "regulatory capture". Further, the Inquiry considered that regulatory capture was a risk that must be mitigated. The Inquiry's recommendations for mitigating this risk are designed to underpin a system that ensures decision-makers are not in the thrall of the gas industry, that allow the public to know what is going on, and allow them to challenge decisions they believe to be wrong…*

To ensure that the gas industry continues to operate in accordance with acceptable standards requires that the Government maintains both the capability and systems to enforce them. ***Fundamental to this will be a system to monitor and review how well laws are being complied with, and how well they are being enforced****. This system will provide critical information for periodic reassessment of risks generated by the gas industry…*

This will be a major task for leaders from the highest levels of government down. It requires an understanding that ***the gas industry will relentlessly exert its influence to change laws that increase their operating costs and, more generally, to shape the social and political environment in its favour."***[3]

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[2] https://frackinginquiry.nt.gov.au/__data/assets/pdf_file/0006/494286/Complete-Final-Report_Web.pdf
[3] https://hydraulicfracturing.nt.gov.au/__data/assets/pdf_file/0016/1221181/dr-ritchies-final-letter-may2023.pdf

We believe that the Territory Coordinator legislation is a remarkable example of this threat identified by the Pepper Inquiry.

We implore the Committee to seek additional legal expertise on the potential misuse of power that this legislation opens the door to, and to ensure that all Parliamentarians are fully briefed with this information.

We truly hope that the members of the Scrutiny Committee are able to bring greater transparency and accountability to this bill, as was promised by the CLP upon coming to government.